

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW  
265 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:  
(617) 951-1354  
(617) 951-0586

July 28, 2004

Mary L. Cottrell, Secretary  
Department of Telecommunication and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02202

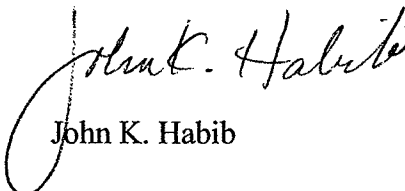
Re: Cambridge Electric Light Company/Commonwealth Electric Company,  
D.T.E. 04-60

Dear Secretary Cottrell:

Enclosed please find a Revised Motion of Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth"), each d/b/a NSTAR Electric ("NSTAR Electric" or the "Companies") for a Protective Order (the "Revised Motion") in the above-referenced proceeding. The Revised Motion addresses each of the documents filed by the Companies in response to the Department of Telecommunications and Energy's (the "Department") and the Attorney General's first set discovery questions for which the Companies are seeking protective treatment. The Companies will file a subsequent Motion for Protective Treatment at a later date addressing any competitively sensitive material that will be filed in response to the Department's second set of discovery questions and the Attorney General's second and third set of discovery questions.

Thank you for your attention to this matter.

Very truly yours,



John K. Habib

Enclosures

cc: Service List  
Joan Foster Evans, Hearing Officer (2)  
Colleen McConnell, Assistant Attorney General (2)

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

---

Petition of Cambridge Electric Light Company and  
Commonwealth Electric Company  
for Approvals Relating to the Termination of  
Purchase Power Agreements with  
Pittsfield Generating Company, L.P.

---

)  
)  
)  
)  
)  
)  
)

D.T.E. 04-60

**REVISED MOTION OF CAMBRIDGE ELECTRIC LIGHT COMPANY AND  
COMMONWEALTH ELECTRIC COMPANY FOR A PROTECTIVE ORDER**

**I. INTRODUCTION**

On July 22, 26 and 27, 2004, Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth," together, the "Companies") filed with the Department of Telecommunications and Energy (the "Department") responses to the First Round of Information Requests issued by the Department and the Attorney General in the above-referenced proceeding. As part of the Companies' responses to information requests, the Companies have submitted exhibits that include: (1) information regarding bids offered by several entities in the Companies' 2003 Auction for the Companies' purchase power agreements ("PPAs"), as described in the Companies' Petition; and (2) bid-related analyses, which include the Companies' projections of future energy prices and their forecasts of payments to be made pursuant to existing PPAs with Pittsfield and PPAs with other parties.

Specifically, Attachment AG-1-2 **CONFIDENTIAL**, Attachment AG-1-4 **CONFIDENTIAL**, Attachment AG-1-5 **CONFIDENTIAL**, Attachment AG-1-8 **CONFIDENTIAL**, Attachment DTE-1-32 **CONFIDENTIAL** and the Companies'

responses to Information Requests AG-1-4 **CONFIDENTIAL**, AG-1-8 **CONFIDENTIAL** and DTE-1-8 **CONFIDENTIAL** (together, the "Confidential Documents")<sup>1</sup> contain proprietary, confidential and sensitive competitive information regarding: (1) bids and bidder names; (2) bid-related analyses that include the Companies' projections regarding the future market price of power; and (3) communications regarding bids offered in the 2003 Auction.<sup>2</sup> For the reasons set forth below, the Companies seek a protective order from the Department to prohibit public disclosure of this proprietary, confidential and sensitive competitive information.<sup>3</sup>

## II. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information

---

<sup>1</sup> Because Attachments AG-1-2 **CONFIDENTIAL**, AG-1-4 **CONFIDENTIAL**, AG-1-5 **CONFIDENTIAL** and AG-1-8 **CONFIDENTIAL** contain voluminous and/or numerous documents, the Companies have provided these attachments on CD-ROM only, to facilitate distribution and review.

<sup>2</sup> On July 22, 2004, the Companies also filed on a **CONFIDENTIAL** CD-ROM: (1) Attachment AG-1-7 **CONFIDENTIAL** (working spreadsheet of Exh. NSTAR-RBH-6); and (2) Attachments DTE-1-10 **CONFIDENTIAL** and 1-11 **CONFIDENTIAL** (working spreadsheets of Exhibits CAM-GOL-3 through 8 and COM-GOL-3 through 8), each of which contains competitively sensitive information described in the Companies' June 29 Motion for a Protective Order (the "June 29 Motion"). As noted in the June 29 Motion, hard copies of these exhibits were filed on that date as part of the Companies' initial filing in this proceeding. Accordingly, although the Companies are not treating Attachment AG-1-7 **CONFIDENTIAL**, Attachment DTE-1-10 **CONFIDENTIAL** and Attachment DTE-1-11 **CONFIDENTIAL** as distinct exhibits requiring inclusion in this Motion, the Companies respectfully request that these attachments be accorded confidential treatment along with the hard copies of the exhibits filed on June 29, 2004, as requested in the June 29 Motion.

<sup>3</sup> The Companies have executed a Non-Disclosure Agreement with the Attorney General which allows for the exchange of confidential information between the parties. Accordingly, the Companies have provided, and will continue to provide, the Attorney General with the Confidential Documents and any future documents in this proceeding for which the Companies seek a protective order.

provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

... [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

In practice, the Department has often exercised its authority to protect sensitive market information. For example, the Department has determined specifically that competitively sensitive information, such as price terms, is subject to protective status:

The Department will continue to accord protective status when the proponent carries its burden of proof by indicating the manner in which the price term is competitively sensitive. Proponents generally will face a more difficult task of overcoming the statutory presumption against the disclosure of other terms, such as the identity of the customer.

Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996). See also Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (the Department determined that price terms were protected in gas supply contracts and allowed Colonial Gas Company's request to protect pricing information including all "reservation fees or charges, demand charges, commodity charges and other pricing information").

Moreover, the Department has recognized that competitively sensitive terms in a competitive market should be protected and that such protection is desirable as a matter of public policy:

The Department recognizes that the replacement gas purchases . . . are being made in a substantially competitive market with a wide field of potential suppliers. This competitive market should allow LDC's to obtain lower gas prices for the benefit of their ratepayers. Clearly the Department should ensure that its review process does not undermine the LDC's efforts to negotiate low cost flexible supply contracts for their systems. The Department also recognizes that a policy of affording contract confidentiality may add value to contracts and provide benefits to ultimate consumers of gas, the LDC's ratepayers, and therefore may be desirable for policy reasons.

The Berkshire Gas Company et al., D.P.U 93-187/188/189/190, at 20 (1994).

### **III. BID-RELATED INFORMATION REGARDING THE COMPANIES' 2003 AUCTION IS PROPRIETARY, CONFIDENTIAL AND SENSITIVE AND WARRANTS PROTECTION FROM PUBLIC DISCLOSURE**

The Companies request confidential treatment of bid-related information that has been provided to the Department and the Attorney General in response to their respective First Set of Information Requests. Bid-related information has been provided in the Confidential Documents as follows:

- (1) the Companies' projections<sup>4</sup> relating to market prices of the electricity delivered under each of their existing PPAs; and the projections of the annual above-market value of each of their existing PPAs (Attachment AG-1-2 **CONFIDENTIAL**; Attachment DTE-1-32 **CONFIDENTIAL**; Response to Information Request DTE-1-8 **CONFIDENTIAL**);
- (2) the annual dollars to be paid under the Companies' existing PPAs

---

<sup>4</sup> In some cases, the projections are not directly set forth, but can be computed with the data included in the page.

(Response to Information Request DTE-1-8 **CONFIDENTIAL**);

- (3) the names of bidders and their bids (Responses to Information Requests AG-1-4 **CONFIDENTIAL** and 1-8 **CONFIDENTIAL**; Attachments AG-1-4 **CONFIDENTIAL**, AG-1-5 **CONFIDENTIAL** and AG-1-8 **CONFIDENTIAL**); and
- (4) communications regarding the Companies' evaluation of bids (Attachment AG-1-5 **CONFIDENTIAL**).

The Companies are seeking protected treatment for the Confidential Documents for several reasons. First, with regard to documents referenced in (1) and (2), above, the release of either set of documents to the public would compromise the ability of the Companies to negotiate future purchase-power deals. The market forecast data in Attachment AG-1-2 **CONFIDENTIAL** is considered proprietary by the company that produced it, and was provided to the Companies pursuant to a confidentiality agreement. More importantly, however, these projections must be protected from public disclosure because the Companies use this information to evaluate other PPA mitigation proposals. The Companies, as well as Boston Edison Company, have not yet completed the divestiture of all of their existing PPAs and are in active negotiations with other parties. If other parties had access to the details of the Companies' updated projections and assumptions regarding future energy prices and the value of their existing PPAs (as referenced in the Response to Information Request DTE-1-8 **CONFIDENTIAL** and Attachment DTE-1-32 **CONFIDENTIAL**), the Companies' ability to negotiate the best deals possible on behalf of customers would be compromised.

With regard to information referenced in (3) and (4), above, this information contains the names of bidders in the 2003 Auction, their respective bids, and communications between the Companies, their consultant and the bidders themselves regarding the Companies' bid-evaluation process. It is important that auction-related information be held confidential because its disclosure could harm financially the parties that participated in the 2003 Auction, as well as the interests of the Companies' customers in other asset divestitures. The Companies have treated the names of bidders, communications with the bidders and bid information and analysis (the "Auction Information") as confidential throughout the auction process. The Auction Information has been tightly controlled and has not been distributed outside of the Companies, their consultant or the Companies' counsel, jurisdictional public regulatory agencies, or, to the extent applicable, outside the management or counsel of the bidders. All bidders were told that the auction process would be conducted in a highly confidential manner. The process was designed this way to encourage participation, promote competition in the bidding process, and maximize the proceeds from the bidding. Any disclosure now could significantly damage the 2003 Auction. The Department should not allow the divestiture to be compromised by unnecessary disclosure of bid information.

Moreover, if Auction Information is disclosed, the effectiveness and competitiveness of auctions for PPAs will be substantially harmed. Indeed, the Companies may be required to commence the auction process again, if the agreements to terminate the Companies' PPAs are not consummated for some unanticipated reason. In this case, the bids submitted in the 2003 Auction, if released, may make bidders more reluctant to submit responses in any subsequent auction. Thus, the release of auction or

bid information at this time would potentially prejudice any future auction process and ultimately harm the Companies' customers, to the extent that a future auction process fails to yield an interested buyer or yields a buyer that offers to purchase the Companies' PPAs under less favorable terms than those offered to date.

In fact, public release of the information in the Confidential Documents generally will disclose the very types of information that the Department has previously and consistently held to be confidential because the release of such information would "seriously undermine" the Companies' negotiating position and thus, result in customers not realizing the maximum amount of mitigation. Western Massachusetts Electric Company, D.T.E. 99-101, at 3 (2002), citing Boston Edison Company, D.T.E. 99-16 (1999); Western Massachusetts Electric Company, D.T.E. 99-56 (1999). See also Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34 (Tr. A at 19 (June 12, 2002)) and Cambridge Electric Light Company, D.T.E. 01-94 (May 9, 2002 Approval by the Department of Amended Motion of Cambridge Electric Light Company for a Protective Order).

Consistent with this recent precedent, the Companies request that the Department protect the above-referenced information regarding: (1) market-price projections (Attachment AG-1-2 **CONFIDENTIAL**, Attachment DTE-1-32 **CONFIDENTIAL** and Response to DTE 1-8 **CONFIDENTIAL**); and (2) existing PPA payment data (Response to DTE-1-8 **CONFIDENTIAL**) from public disclosure for a period of 3 years from the date of the Department's final order in this matter. Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34 (Tr. 1 at 12-13 (July 1, 2002)). In addition, the Companies request that the Department protect the above-



referenced information regarding bidder names, bids and bid-related communications (Attachments AG-1-4 **CONFIDENTIAL**, AG-1-5 **CONFIDENTIAL**, AG-1-8 **CONFIDENTIAL**; Responses to Information Requests AG-1-4 **CONFIDENTIAL** and AG-1-8 **CONFIDENTIAL**); from public disclosure for a period of 10 years from the date of the Department's final order in this matter. Id. The Companies recognize that it is in the public interest to make submitted documents available to the public at some point in the future and believes that the respective 3 and 10-year periods balance: (1) the interests of the Companies' customers and the parties to 2003 Auction with (2) the interest in making the material public.

Accordingly, both the information and the Companies' strategic use of the information presented Confidential Documents should be protected from public disclosure through the issuance of a protective order because the information is proprietary, confidential and competitively sensitive. The disclosure of this sensitive information would undermine the Companies' ability to maximize their mitigation efforts, which inures to the benefit of the Companies' customers. The Department has protected similar information relating to analyses of the benefits of restructured or terminated PPAs submitted in previous proceedings. Therefore, the Companies request that the Department protect the market price and related analysis in the Confidential Documents from public disclosure, consistent with G.L. c. 25, § 5 and Department precedent.

#### **IV. CONCLUSION**

The Companies respectfully request that Confidential Documents be held confidential, not be placed in the public docket and be disclosed only to the Department,

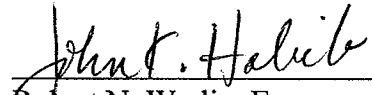
for the time periods referenced herein. Parties to the case may request to review the relevant documents, subject to the terms of a mutually agreed Non-Disclosure Agreement. This approach will allow the Department and parties to the proceeding to review the Companies' analysis of the Pittsfield Termination Agreements while ensuring that proprietary, confidential and sensitive market-related information will remain confidential.

**WHEREFORE**, for the reasons set forth herein, the Companies respectfully request that the Department allow the Companies' Motion for a Protective Order.

Respectfully submitted,

**CAMBRIDGE ELECTRIC LIGHT COMPANY  
COMMONWEALTH ELECTRIC COMPANY**

By Their Attorneys,

  
Robert N. Werlin, Esq.  
John K. Habib, Esq.  
Keegan, Werlin & Pabian, LLP  
265 Franklin Street  
Boston, Massachusetts 02110  
(617) 951-1400 (telephone)  
(617) 951-1354 (facsimile)

Date: July 28, 2004